IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 107 of 1983

in

SPECIAL CIVIL APPLICATION No. 2880 of 1980

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R VENKATESWARAN

Versus

UNION OF INDIA

Appearance:

1. LETTERS PATENT APPEAL No. 107 of 1983

MR SN SHELAT for Appellant No.

MR AK CLERK for Appellant No.

MR ANANT S DAVE for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 09/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

This Letters Patent Appeal is filed against the order and judgment dated 1st/2nd September 1982 passed by the learned Single Judge of this Court in Special Civil Application No. 2880 of 1980 whereby the petition filed by the present appellant,original-petitioner was dismissed.

2. The brief facts, giving rise to the present petition, are that the appellant having passed his BE (Civil) examination with higher Second Class in 1967 joined as an Apprentice Engineer in 1968 with M/s. Gammon India Limited. The appellant was appointed as Junior Engineer and posted at Bokaro Steel Plants and subsequently was selected as Junior Engineer (Civil) in the Public Works Department of the State of Karnataka at Bangalore in 1970.

3. The appellant, thereafter, had applied for being considered for the post of Engineer (SC) in the Department of Space (Civil Engineering Division) of the Indian Space Research Organisation (ISRO). The appellant was selected as Engineer (SC) and was given his posting on 15th May 1973 at Shri Harikota. The appellant had put in 5 years experience when he was selected as Engineer (SC) in the ISRO. He was confirmed as Engineer (SC) in June 1976. As per the promotion scheme in ISRO, a fresh recruitee, after he enters in service at the appropriate grade goes up and up upon gaining experience as prescribed provided he is not unfit. As per the promotion policy, it was not vacancy oriented and higher grade was given to the same person and the post also remained the same, the duties and responsibilities were also remained the same. As per the said scheme, a person with BE Degree with 3 years experience could be considered for the post of Engineer (SC) and he could be considered for the post of Engineer (SD) after 5 years of experience. The appellant became due for promotion to the post of Engineer (SD) after having completed 4 years of service in 1977. Still, however, the appellant was not sent for selection on 13th May 1977, 10th June 1978 and 19th March 1979 and he was sent for selection only in June 1979 and April 1980. The appellant was, however not

selected and hence the appellant filed the abovereferred Special Civil Application challenging the action of the respondents in not granting the promotion which he was entitled to in law.

4. The appellant had contended before the learned Single Judge that in 1975 the respondents framed new rules for promotion and prescribed new norms. While prescribing the new norms for promotion, the respondents normalised the promotion of the existing employees in different grades so that they might not have to suffer rigours of the new norms prescribed by O.M. dated 12th September 1975. The scheme of normalisation prescribed was that if a person having qualifications for higher post was recruited to a lower post for which he applied, he was to be normalised by giving him weightage, so that no injustice was done to him qua direct recruits under new norms. Under the old norms, a BE with 3 years' experience was eligible for appointment as Engineer (SC) and BE with 5 years' experience was eligible for appointment as Engineer (SD). According to the new norms, for being eligible for appointment on promotion as Engineer (SD), a BE was required to have 7 years experience for direct recruitment and 4 years' experience as SC for promotion. The appellant with 5 years of experience, eligible for appointment as Engineer (SD) was appointed as Engineer (SC) and under the new norms he was required to have 4 years experience to be eligible for promotion to the post of Engineer (SD) while experience of 3 years would have sufficed under the old norms. The appellant, a BE (SC) Grade was therefore put to disadvantage under the new norms and hence he was entitled to the benefit of "normalisation" which was given to the incumbents of various other categories who were put to this disadvantage under the new norms. But the new scheme was not made applicable to persons having degree qualifications in the grade of Engineer (SC). It was contended that when persons having qualifications of Ph.D. and M.Sc. in the SC Grade were normalised, there was no reason to exclude the persons having BE degree working in SC Grade from the benefit of normalisation.

5. It was further contended that the degree holders in the grade of SC were not included under the scheme of normalisation though they lawfully were entitled to be so included. Dr. Rathnaraj, T. Madhusudan Rao, Dr. A.N. Chowdhry, D. Chandrasekaran and K. Vishwanathan, all of Shri Harikota who were Degree holders in "SC" grade were normalised on the lines of the O.M. in question, which amounted to evil discrimination by the respondents among the employees who were similarly situated.

6. It was further contended that the normal review was to be held after the employee has completed the prescribed number of years of service in a particular grade and the prescribed number of years service in respect of Engineer (SC) being 4 years. Before an employee can be considered for review under the Memorandum, screening was prescribed before review. It was submitted by the appellant that screening out the appellant in May 1977, June 1978 and March 1979 was highly arbitrary. It was further submitted that the screening in respect of the appellant was done on the sole basis of grading given by the reporting or reviewing officers in total ignorance of the effect thereof and it was therefore an illegal screening. It was further submitted that the achievement of the appellant was never placed before the Review Committee in the year 1977 or 1978 so as to enable the Review Committee as required by the Rules, to consider whether the appellant, who was screened out by the Standing Committee should be interviewed or not. The appellant has also contended that the respondent has not applied the correct test while considering the case of the appellant for review. There were no adverse remarks and in the CRs the appellant has been recommended for promotion. Despite there being several achievements to the credit of the appellant the appellant was left out while some of the other officers who were working with the appellant were considered fit for normal review and were promoted to the higher grades. The appellant has also contended that the scheme envisaged for merit promotions which were to be restricted to 5% of the posts only, having been applied by the respondents to 100% promotions contrary to the directions of the Government of India and hence the action of the respondents was illegal and liable to be quashed and the respondents were required to be directed to reconsider the case of the appellant for promotion on the basis of the correct criteria from the retrospective date.

7. It is submitted that the learned Single Judge has rejected all these contentions raised by the appellant and thereby dismissed the petition. The learned Single Judge has held that as far as the norms are concerned, it was not a question of appointing a particular person to a particular post so that the candidates might be required themselves to be prepared on the said norms. It was a question of overall appreciation of the capacity of the persons already in service and they were to be brought up to the post on the strength of their scientific achievement and performance during the interview. It was

further held by the learned Single Judge that the Review Committee perused the Confidential Report/Dossiers of all persons interviewed and based on the assessment of the confidential report/Dossiers, and their performance at the interview, the Review Committee recommended only 5 persons suitable for promotion to the next higher grade of Engineer (SD). The name of the appellant was not recommended by the Review Committee. The learned Single Judge has, therefore, held that it was not a case where the selection was made without consideration of data. Thus, considering the overall view of the matter, the decision taken by the respondent authorities could not be found by the learned Single Judge to be assailable in the writ petition under Article 226 of the Constitution of India and hence the petition was rejected by the learned Single Judge.

8. It is under these circumstances and in the above background, the present appeal is filed by the appellant-original petitioner before us under Clause 15 of the Letters Patent. Heard Mr. AK Clerk, the learned advocate appearing for the appellant and Mr. Anant Dave, learned Standing Counsel appearing for the respondent authorities. Mr. Clerk has more or less reiterated all the contentions which were raised before the learned Single Judge and submitted that the learned Single Judge has not correctly appreciated the said contentions. He has further submitted that the appellant was fit to be promoted in all respects and yet the appellant was wrongly screened out; his case was not timely presented before the Review Committee; and ultimately he was given the discriminatory treatment and promotion was wrongly denied to the appellant. Even the appellant's case for normalisation was not properly appreciated especially in the light of the fact that the benefit of normalisation was given to the persons who were specifically named in the petition. The decision of the learned Single Judge is therefore required to be interfered with by the Division Bench of this Court while exercising powers under Clause 15 of the Letters Patent.

9. On the other hand, Mr. Anant Dave, the learned Standing Counsel appearing for the respondent authorities relied on the averments made and submissions as well as contentions raised in the affidavit-in-reply. He has submitted that normally direct recruitment was restricted to grade SD for which the requisite qualifications prescribed is Ph.D. He has further submitted that according to ISRO norms, promotion of an officer from one grade to another grade was with respect to his record of service (Annual Confidential Reports), performance in the

oral interview before the Departmental Promotion Committee and as per other recruitment rules. The principle of promotion of personnel subject to rejection of the unfit did not exist in ISRO for technical staff. He has further submitted that there should be positive merit in the employee for being considered for promotion to the next higher grade. He has further submitted that the appellant was appointed as an Engineer "SC" on 15-5-1973 and as per ISRO norms his case for promotion to the next higher grade, namely "SD" was taken up as on 1-7-1979 and as per the prescribed procedure for review for promotion, the first stage was considered by the Screening Committee, which after taking into account the performance of work as reflected in the Annual Confidential Report recommended whether a particular officer who has completed the prescribed years of service was suitable enough to be reviewed by the Departmental Promotion Committee for promotion to the next higher grade. The Departmental Promotion Committee considered the recommendation of the Screening Committee for acceptance or otherwise. The second stage was the candidate to appear before the duly constituted Departmental Promotion Committee which included one or two experts in the field drawn from outside the organisation. According to the case of the appellant, he was placed before the Screening Committee for consideration and the Committee after perusal of the Annual Confidential Report did not recommend the appellant to be suitable for appearing before the Departmental Promotion Committee. Similarly, he was screened out on 10-6-1978 for 1-7-1978 and on 9-4-1979 for review of promotion on 1-7-1979. Thereafter, the appellant was interviewed by the Departmental Promotion Committee on 11-6-1979 and the Committee did not find him suitable for promotion to the next higher grade namely Engineer SD. He has therefore submitted that this procedure was prescribed and uniformly followed in all cases in the organisation and hence there was no ground for the appellant to raise any grievance.

10. With regard to the appellant's grievance for denying the benefit of normalisation of the existing employees at the time of introduction of new norms on 1-1-1976. It was submitted that the normalisation was permitted only in the case of persons who were in the lower grades but were eligible for appointment to higher grades with reference to basic qualifications prescribed for higher posts in the new norms. Thus, Ph.Ds. who were eligible as per the new norms for direct recruitment to the post of Engineer SD but were in grades lower than grade SD were allowed to be normalised as SDs. It was

further submitted that even though BE 1st Class with 7 years' experience was eligible for direct recruitment to the post of Engineer SD as per new norms, normalisation of the existing employees in the lower grades with BE degree and 7 years' experience was not allowed. In the case of the appellant, he being BE only, that too 2nd Class, was not eligible to be regarded to the post of Engineer SD directly as the basic qualification required for such direct recruits was Ph.D. It was further submitted that for the purpose of regularising the existing staff, experience in ISRO alone was required to be taken into account. It was further submitted that the appellant being the 2nd Class BE with less than 3 years service in the department as on the date of normalisation, i.e., 1-1-1976, there was no claim of normalisation and get appointed to the post of SC as held by him.

11. With regard to the appellant's challenge to the validity of grading awarded in the Annual Confidential Report vis-a-vis the criteria for screening in or screening out of an officer for the purpose of promotion is concerned, it is submitted that the assessment of work done by Reviewing Officer could not be said to be superfluous or vague because the Reviewing Officer was required to apply his mind and to take unbiased view with reference to the account of the work given by the officer and to make the assessment in the light of materials placed before him. It is further submitted that the method adopted by the Screening Committee was the scientific one and the recommendation was the result of the collective thinking and seasoned judgment. The Screening Committee's recommendations were placed before the Departmental Promotion Committee for their approval and the Departmental Promotion Committee was free to review Screening Committee's recommendations and accept or reject the same. The appellant's grievance that his case was not considered by the Reviewing Committee in the year 1977 and 1978 was not justified.

12. The appellant's plea to achieve the merit promotions to 5% or any such limit was also not acceptable as the department was engaged in scientific research and development and no part of the work can be termed as routine and the rules for promotion adopted liberally in the case of those engaged on routine work. It was emphatically stated that there was no such routine work in the department and ultimate result of any work was the culmination of the efforts and work of all the departments. Considering this vital aspect of the matter appropriate decisions were taken by the respondent

authorities in the matter.

13. With regard to the petitioner's grievance about discrimination, it was stated that the persons who were promoted to higher grades were also promoted on the basis of records of service, performance of interview and other relevant factors. The procedure followed in those cases was the same as that followed in the case of the appellant. It was further stated that the appellant in fact appeared before the Departmental Promotion Committee which reviewed the cases of officers for promotion as on 1-7-1983 and the result of the review has been kept in a closed sealed cover by the Chairman of the Committee. The Committee consisted of Senior Engineers of the Department holding responsible position and three experts from the field of other organisations. Considering all these points, it was strongly urged by Mr.Dave that the learned Single Judge has rightly rejected the petition of the appellant and this Court should not interfere with the decision taken by the learned Single Judge after exhaustively dealt with all the points raised by the appellant in the petition.

14. After having heard the learned advocate Mr. AK Clerk appearing for the petitioner as well as Mr. Anant Dave, the learned Standing Counsel for the respondent authorities, and after having gone through the Appeal Memo, affidavit-in-reply filed on behalf of the respondent authorities and the order and judgment of the learned Single Judge, we are of the view that the order of the learned Single Judge does not call for any interference while exercising our appellate power under Clause 15 of the Letters Patent. We had given our anxious thoughts to the various submissions tendered by both the sides. The facts, which are emerging from the record and the due appreciation of the said facts in the light of the settled legal propositions by the learned Single Judge and minute as well as scrupulous analysis of the said facts and evidence will lead us to believe that the learned Single Judge has rightly decided the various issues raised by the appellant in the petition. The norms adopted by the respondent authorities, procedure prescribed for the said norms, functions of the Review Committee as well as the Departmental Promotion Committee, eligibility or entitlement of the normalisation etc., were properly appreciated and contentions were rightly dealt with by the learned Single Judge. The appellant's grievance with regard to discrimination were also ruled out in the light of the facts placed before the learned Single Judge and those promotions were given after having considered the

respective facts and it could not be said that the same was in any way capable of being put the appellant's case on any higher footing. We are in respectful agreement with the reasoning adopted and the conclusions drawn by the learned Single Judge, and we are of the view that the appellant has remained unsuccessful before us in persuading us to take any different view in the matter. Even otherwise, the petition was of 1980 and the present Letters Patent Appeal was filed in 1983. The appellant has already retired by now and by afflux of time the rigour contained in the litigation is also reduced to a great extent. The appeal may have some survival value for getting retirement benefits and that too, if the contentions raised by the appellant are accepted by us. However, as stated above, we do not find much substance in the said contentions. The appellant has neither made out a case for promotion nor for the benefit of normalisation and hence the appeal is dismissed with no order as to costs.

[J.N. Bhatt, Actg. C.J.]

rmr. [K.A. Puj, J.]